

THE

SUPREME COURT OF THE UNITED STATES

MORGAN THOMAS, PETITIONER FOR THE
WRIT OF HABEAS CORPUS,

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE
DISTRICT OF COLUMBIA.

FILED FOR RECORD IN 1904
(1904)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 415.

JOHN ANDERSON, APPELLANT,

vs.

MORGAN TREAT, UNITED STATES MARSHAL FOR THE
EASTERN DISTRICT OF VIRGINIA.APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF VIRGINIA.

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THE UNITED STATES OF AMERICA,
Eastern District of Virginia, to wit:

At a district court of the United States for the fourth circuit, in and for the eastern district of Virginia, begun and held at the city of Norfolk, on the 26th day of August, in the year of our Lord one thousand eight hundred and ninety-eight.

Present: The Honorable Edmund Waddill, jr., judge; William H. White, esq., attorney; Morgan Treat, esq., marshal; H. S. Ackiss, clerk; Messrs. P. J. Morris and Hugh G. Miller, esquires, attorneys for petitioner, John Anderson.

Among other were the following proceedings, to wit:

Petition for writ of habeas corpus.—Filed August 26, 1898.

In the district court of the United States for the eastern district of Virginia.

To the Honorable EDMUND WADDILL, *Judge of said Court:*

Your petitioner, John Anderson, respectfully shows your honor that he is now imprisoned and restrained of his liberty by Morgan Treat, United States marshal for the eastern district of Virginia, and is now confined in the jail of the city of Norfolk, Virginia.

Your petitioner respectfully represents that he is thus imprisoned and held in custody under color of the authority of the Constitution and laws of the United States relating to the commission of crimes within its maritime jurisdiction.

2 Your petitioner represents that he was indicted, charged with murder upon the high seas, in the circuit court of the United States in and for the eastern district of Virginia, at the November term thereof, in the year 1897; that on the trial subsequent, beginning on the 18th day of December, in the year 1897, and some time subsequent thereto, he was found guilty of the said charge of murder. That subsequent to said conviction he has been sentenced to be executed on the 26th day of August, 1898, between the hours of two p. m. and six p. m. of that day, and that he is now held in custody, to be executed as aforesaid.

Your petitioner represents that his detention for the purposes aforesaid is illegal, in violation of the laws and the Constitution of the United States of America, and that on this account his detention is unjust and unlawful, for the following reasons, to wit:

Your petitioner represents that on the 7th day of November, 1897, he was delivered to the United States marshal for the eastern district of Virginia, charged with having committed the crime of murder within the maritime jurisdiction of the United States of America; that as a prisoner of the said United States marshal he was confined on the day of his delivery in the city jail of the city of Norfolk to await his examination, as provided by law, before the United States commissioner for the eastern district of Virginia; that on that day, viz, the 7th day of November, 1897, while thus detained in the city jail of the city of Norfolk, he

employed as counsel to represent him one P. J. Morris, an attorney at law, residing in the city of Norfolk, Va.

3 Your petitioner further represents that after securing the services of the said Morris, on the same day the said Morris called at the city jail (the place of the detention of your petitioner) and asked permission to see your petitioner, to consult with him as attorney and client. Your petitioner represents that admission was refused my said attorney, for the reason that the district attorney of the United States for the eastern district of Virginia had instructed the jailer and others in charge of your petitioner to allow no one, without exception, to see your petitioner; whereupon your petitioner represents that on the 7th day of November, 1897, my said attorney asked permission, by phone, of the district attorney for the eastern district of Virginia, to permit him to visit the said jail and consult with your petitioner; that said application was refused, and that on account of the order of the district attorney lodged with the jailors and keepers of the prison in which your petitioner was detained your petitioner was denied the right of the assistance of counsel to represent your petitioner.

Your petitioner further represents that the district attorney for the eastern district of Virginia informed your petitioner's counsel on the night of the 7th of November, 1897, that he would let him know on the following day whether or not permission would be granted your petitioner's counsel to consult with your petitioner. Your petitioner represents that instead of informing my said attorney and giving my said attorney full notice as to the time when your petitioner's preliminary hearing would be held, and before the United States district attorney for the eastern district of Virginia had given my said attorney permission to consult with me, I was taken in irons, handcuffed, to the office of the

4 United States commissioner and examined, without aid or presence of my attorney. Your petitioner further represents that before the time the said examination was completed and statements made by me were finished, my said attorney discovered that said examination was going on without his presence and before any consultation could be held between your petitioner and his said attorney, and my said attorney thereupon applied to the said district attorney of the United States and to the Honorable Robert W. Hughes, late judge for the eastern district of Virginia, and was told by them that, as the defence of your petitioner was inconsistent with the defence of others charged at the same time with complicity in the destruction of the vessel Olive Pecker, that any attorney representing both prisoners was objectionable, and that the court would not permit the same attorney to represent both your petitioner and the other prisoners, and therefore the court would assign him an attorney to represent him. Your petitioner therefore represents that he was deprived of the free exercise of his rights to be represented by counsel, in accordance with article 6 of the amendment of the Constitution of the United States, and that therefore the action of the court in depriving him of the right to select his own counsel the court exceeded its power and jurisdiction, and that therefore the trial and proceedings therein are null and void, and that the judgment and the sentence of the court are void and in violation of his constitutional rights, as he will show. And your petitioner therefore prays that the writ of habeas

corpus may issue out of the United States court for the eastern district of Virginia to the said Morgan Treat, requiring him to produce the body of your petitioner before said court at some convenient time, to be therein designated, there to abide by what shall be decided by the court in the premises, and that your petitioner may be allowed such proceedings as may be lawful in the premises and as the circumstances of the case may require.

JOHN ANDERSON.

HUGH G. MILLER,
P. J. MORRIS,
P. Q.

State of Virginia, city of Norfolk, on this the 23d day of August, 1898, before me personally came (John Anderson) the above-named petitioner, and being by me duly sworn made oath to the foregoing petition as true in substance and in fact.

J. B. HANCOCK,
Notary Public.

(Indorsed :) John Anderson vs. Morgan Treat, U. S. marshal. Petition for writ of habeas corpus. Filed August 26, 1898. H. S. Ackiss, clerk.

And on the same day, to wit: On the 26th day of August, 1898, an order was entered by the court on the foregoing petition, which order is in the words and figures following:

Order of court on petition.—Filed August 26, 1898.

In the district court of the United States for the eastern district of Virginia.

Edmund Waddill, jr., present.

This day came John Andersen, by his counsel P. J. Morris and Hugh G. Miller, and filed his petition and moved this court to grant him a writ of habeas corpus as in said petition prayed for.

Whereupon, William H. White, United States attorney for the eastern district of Virginia, appeared and resisted the filing of the said application and the granting of the said writ; and thereupon the court heard argument from counsel for the petitioner and for the United States, in the course of which argument, by consent of parties, the following papers were read and made a part of these proceedings and this order, namely:

1. The following order:

"THE UNITED STATES,
"es.
"JOHN ANDERSEN, ALIAS JOHN ANDERSON." }

"No. 234, Upon an indictment for the murder of William Wallace Saunders.

"No. 235, Upon an indictment for arson on the high seas.

"No. 236, Upon an indictment for arson on the high seas.

"No. 239, Upon an indictment for the murder of William Wallace Saunders.

"No. 240, Upon an indictment for the murder of John W. Whitman.

"The court having, on the 8th day of November, 1897, upon its own motion, as well as upon the request of the accused, John Anderson, assigned George McIntosh, esq., as counsel for the said John Anderson, under and by notice of sec. 1034, Revised Statutes of the United States, and it appearing to the court that he has since then performed the duties of such counsel and has been recognized as such by this court in all proceedings had herein.

"And it further appearing that no entry of such assignment was made in the minutes of this court for the said 8th day of November, A. D. 1897, it is hereby ordered that the said assignment be now entered by the clerk of this court as of the said 8th day of November, A. D. 1897.

"Dec. 14, 1897.

"RO. W. HUGHES, *Judge.*"

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2. The following written statement, to wit:

"NORFOLK, Va., *Novr. 9, 1897.*

"Referring to the newspaper reports, especially that contained in the 'Pilot,' wherein I am represented as stating that the conduct of the United States district attorney, Wm. H. White, was outrageous, and was so characterized by Judge Hughes, in that he refused me admission to see the prisoners in the 'Olive Pecker' case, I beg to say as follows:

"Mr. White, in this case, as in all others, has shown me the utmost consideration. Yesterday morning, when I went up to the office of Mr. White, I found he was about to examine the prisoners, and told him that I expected to be employed by them. Mr. White informed me that he had not himself talked with the men, and that it was imperatively necessary that he should do so in order to judge which would be indicted and which might be needed only as witnesses; that as soon as he had completed that and the men had employed me, they would be at my disposal. I acquiesced in the propriety of this position. The men were in custody of the U. S. marshal and in the U. S. marshal's room after this preliminary examination, which I understand was voluntary on the part of the prisoners, and before it was finished I applied to Judge Hughes to give me permission to see the men, who were then in the U. S. marshal's custody and in his office. This was done, and five of the men then in writing employed me, and I then gave this writing to Mr. White.

"I desire distinctly to say that in this matter Mr. White has done nothing which justifies any criticism on my part, and I have to thank him in this, as in other matters, for courtesies of a very considerate character.

"P. J. MORRIS,

"*Counsel for William Harsburg.*

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"JOHN LIND.

"JUAN DI DIOS BARRIAL.

"MARTIN BARSTAD.

"ANDREW MARCH.

"This letter was signed in my presence. I will use the opportunity of saying that I did not characterize the conduct of the district attorney as outrageous.

"RO. W. HUGHES, *Judge.*"

3. The writing in the following words and figures, to wit:

"NORFOLK, VA., Nov. 8, 1897.

"We, William Haisburg, Andrew March, John Lind, M. Barstad, Don Barrial, do hereby authorize P. J. Morris to represent us in all the courts of the United States in any and all cases pending against us and to be presented against us connected with the charges against us growing out of the burning of the vessel 'O. H. Pecker.'

"WM. HORSBURGH.

"MARTHINUS BARSTAD.

"ANDREW (his x mark) MARCH.

"JUAN DE DIOS BARRIAL.

"J. LIND.

"To the judge of the United States Court, Norfolk."

4.

"NORFOLK, Nov. 7th, 1897.

"P. J. MORRIS, *Atty. at Law.*

"DEAR SIR: We desire co'nsul and request an interview with you, in order to arrange for our defence of charge now pending in the court of the United States.

"Yours, truly,

"WM. HORSBURGH.

"ANDREW (x) MARCH.

"MARTIN BARSTAD.

"JOHN LIND.

"JUAN BARRIAL.

"The prisoners mentioned in this paper are entitled to be seen at any time and at all times by their counsel. Mr. P. J. Morris is hereby authorized to see and confer with these prisoners whenever he or they think fit.

"8th Nov., 1897.

"RO. W. HUGHES, *Judge.*"

9 Whereupon the court, after mature consideration, doth deny the writ of habeas corpus prayed for in the said petition, and orders that the said petition be, and the same is hereby, dismissed.

And on motion of the said petitioner an appeal is allowed him from this order to the next term of the Supreme Court of the United States, the same to be applied for and perfected on or before the first day of the next term of said court, to wit, the October term, 1898. And it is ordered that the clerk of this court cause to be forwarded a transcript of the petition, of this order, and of all other proceedings had in this cause to the clerk of the Supreme Court of the United States.

And it is further ordered that the said prisoner remain in the custody of the marshal of this district and be confined in close custody in the

Norfolk city jail pending the prosecution of this appeal, unless otherwise ordered by the said Supreme Court.

And the court further certifies as a part of this order that although indictment No. 241, under which the petitioner, John Anderson, was tried and convicted of murder, was not one of the number embraced in the order of the 14th of December, 1897, assigning said McIntosh as counsel, that still said McIntosh under said order and pursuant to the assignment of the court continued to represent the said Anderson upon his trial in the circuit court of the United States and upon his appeal in the Supreme Court of the United States on trial of the said indictment No. 241.

An appeal bond is required of the petitioner in the penalty of \$100, which he will execute within ten days from this date.

EDMUND WADDILL, Jr., Judge.

Norfolk, Va., 26th August, 1898.

10 (Indorsed:) John Anderson vs. Morgan Treat, U. S. marshal.
Decree on petition for writ of habeas corpus. Filed August 26,
1898. H. S. Ackiss, clerk.

And on the same day, to wit, on the 26th day of August, 1898, the petitioner, John Anderson, filed his petition for an appeal to the U. S. Supreme Court and his assignment of errors, which are in the words and figures following, to wit:

Petition for appeal and assignment of errors.

In the Supreme Court of the United States of America.

JOHN ANDERSON	}	Ex parte habeas corpus.
<i>vs.</i>		
MORGAN TREAT, U. S. MARSHAL FOR THE eastern district of Virginia.		

To the honorable judges of the Supreme Court of the United States:

Your petitioner, John Anderson, represents that he is aggrieved by an order of the district court of the United States for the eastern district of Virginia in this cause, entered on the 26th day of August, 1898, refusing to award your petitioner a writ of habeas corpus upon his application duly presented.

Your petitioner assigns the following error:

The court erred in refusing to award your petitioner a writ of habeas corpus as prayed for in his application, as it appeared from the petition that your petitioner was entitled thereto; as said petition shows that the court exceeded in power and jurisdiction in denying your petitioner the right of selecting his own counsel as guaranteed by law.

11 Your petitioner, therefore, feeling aggrieved by said decree, hereby appeals from the said decree in the particulars above set forth to the Supreme Court of the United States of America, and prays that the same, with a full transcript of the record, may be sent to said court without delay, and that the said court will proceed to hear said

cause, and that said decree in the particulars aforesaid may be reversed, and that the writ of habeas corpus asked for may be granted to your petitioner, and that he may have such other and further relief as in law and in justice he may be entitled to receive.

JOHN ANDERSON.

P. J. MORRIS,
HUGH G. MILLER,
Attys. for Petitioner.

(Indorsed:) John Anderson vs. Morgan Treat, U. S. marshal. Petition for appeal and assignment of error. Filed Aug. 26, 1898. H. S. Ackiss, clerk.

And on another day, to wit, on the 3rd day of September, 1898, the petitioner, John Anderson, tendered to the court his appeal bond, which said bond, together with the order of approving same, are as follows:

Appeal bond.—Filed Sept. 3rd, 1898.

12 Know all men by these presents, that we, John Anderson, as principal, and P. J. Morris and H. G. Miller, as sureties, are held and firmly bound unto Morgan Treat, U. S. marshal for the eastern district of Virginia, in the full and just sum of one hundred dollars, to be paid to the said Morgan Treat, U. S. marshal for the eastern district of Virginia, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this second day of September, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately at a district court of the United States for the eastern district of Virginia, in a suit depending in said court between John Anderson against Morgan Treat, U. S. marshal for the eastern district of Virginia, a decree was rendered against the said John Anderson, petitioner as aforesaid, and the said John Anderson, petitioner as aforesaid, having obtained an appeal to reverse the decree in the aforesaid suit, and a citation directed to the said Morgan Treat, U. S. marshal for the eastern district of Virginia, citing and admonishing him to be and appear at the Supreme Court of the United States, to be holden at Washington, D. C., on the day in the said citation mentioned.

Now, the condition of the above obligation is such, that if the said John Anderson, petitioner as aforesaid, shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

JOHN ANDERSON.	[SEAL.]
P. J. MORRIS.	[SEAL.]
H. G. MILLER.	[SEAL.]

Sealed and delivered in presence of

H. S. ACKISS.

Approved by

EDMUND WADDILL, Jr.,
United States District Judge.

- 13 (Indorsed:) John Anderson vs. Morgan Treat, U. S. marshal.
Appeal bond. Filed Sept. 3, 1898. H. S. Ackiss, clerk.

Order approving appeal bond.—Filed Sept. 3, 1898.

In the district court of the United States for the eastern district of Virginia.

JOHN ANDERSON
against
MORGAN TREAT, UNITED STATES MARSHAL
for the eastern district of Virginia.

} Upon an application for a
writ of habeas corpus
praying the release of
the petitioner from the
custody of defendant,
&c.

This day came the petitioner, John Anderson, and tendered to the court an appeal bond in the penalty of one hundred dollars, required to be executed by the order entered in this cause on the 26th day of August, 1898, with P. J. Morris and Hugh G. Miller as his sureties, which bond is hereby approved and ordered to be duly recorded and filed.

EDMUND WADDILL, Jr., Judge.

SEPT. 3RD, 1898.

(Indorsed:) Anderson, John, vs. Treat, marshal, &c. Order approving appeal bond, &c. Filed Sept. 3, 1898. H. S. Ackiss, clerk.

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Citation.

UNITED STATES OF AMERICA, vs.

The President of the United States to Morgan Treat, United States marshal for the eastern district of Virginia, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at the city of Washington, in the District of Columbia, on the first day of the October term, 1898, next, pursuant to an appeal from a judgment of the district court of the United States for the eastern district of Virginia in your favor passed in a cause in said court, wherein John Anderson is petitioner and you are defendant, to show cause, if any there be, why the judgment rendered against the said John Anderson in said cause mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edmund Waddill, jr., judge of the district court of the United States for the eastern district of Virginia, this 27th day of August, in the year of our Lord one thousand eight hundred and ninety-eight.

EDMUND WADDILL, Jr.,
Judge United States District Court,
Eastern District of Virginia.

15

On this 31st day of August, in the year of our Lord one thousand eight hundred and ninety-eight, personally appeared J. E.

West, deputy U. S. marshal, before me, the subscriber, H. S. Ackiss, United States commissioner for the eastern district of Virginia, Norfolk, and makes oath that he delivered a true copy of the within citation to Wm. H. White, U. S. dist. atty.

J. E. WEST.
Deputy U. S. Marshal.

Sworn to and subscribed the thirty-first day of August, A. D. 1898.

[SEAL.]

H. S. ACKISS,
*United States Commissioner
for the Eastern District of Virginia, Norfolk.*

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Certificate.

UNITED STATES OF AMERICA,
Eastern District of Virginia, to wit:

I, H. S. Ackiss, clerk of the district court of the United States for the eastern district of Virginia, do certify that the foregoing is a full and true record of the proceedings and judgment of the said court in the therein-entitled cause.

In testimony whereof, I hereto set my hand and affix the seal of the said court on this 10th day of September, in the year of our Lord one thousand eight hundred and ninety-eight.

[SEAL.]

H. S. ACKISS, *Clerk.*

17 (Indorsed:) John Anderson, petitioner, appellant, vs. Morgan Treat, U. S. marshal, east. dist. of Va., appellee. Transcript of record.

18 (Indorsement on cover:) Office Supreme Court of U. S. Received Sep. 19, 1898. Case No. 17000, E. Virginia D. C. U. S., term No. 415. John Anderson, appellant, vs. Morgan Treat, United States marshal for the eastern district of Virginia. Filed September 22d, 1898.